

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY OF WOODINVILLE
REPEALING ORDINANCE NO. 195 RELATING TO
TRANSPORTATION DEMAND MANAGEMENT,
ADOPTING A COMMUTE TRIP REDUCTION (CTR)
PLAN, IMPLEMENTING MEASURES REQUIRED BY
CHAPTER 70.94.527 RCW.

WHEREAS, motor vehicle traffic is a major source of emissions that pollute the air, and air pollution causes significant harm to public health and degrades the quality of the environment; and

WHEREAS, increasing motor vehicle traffic aggravates traffic congestion in the City of Woodinville; and

WHEREAS, traffic congestion imposes significant cost on City business, government, and individuals in terms of lost working hours and delays in the delivery of goods and services as well as making the City a less desirable place to live, work, visit, and do business; and

WHEREAS, capital and environmental costs of fully accommodating the existing and projected motor vehicle traffic on roads and highways are prohibitive while decreasing the demand for vehicle trips is significantly less costly and is at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities; and

WHEREAS, employers have significant opportunities to encourage and facilitate the reduction of single-occupant vehicle commuting by employees; and

WHEREAS, State policy, as set forth in RCW 70.94.527 and the CTR Task Force Guidelines, requires the City of Woodinville to develop and implement a plan to reduce single occupant vehicle commute trips; and

WHEREAS, the plan must require affected employers to implement programs to reduce vehicle miles traveled per employee and. the number of single-occupant vehicles used for commuting purposes by their employees; and

WHEREAS, a transportation demand management element such as this ordinance is required pursuant to RCW 36.70A.070(6)(e), the Washington State Growth Management Act; and

WHEREAS, adoption of this ordinance will promote the public health, safety, and general welfare within the City of Woodinville and the region; and

WHEREAS, the City of Woodinville recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues, and

WHEREAS, City Council repeals Ordinance No. 195 ; and

WHEREAS, this ordinance is consistent with the CTR Task Force Guidelines; **NOW THEREFORE**,

THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Definitions

For the purpose of this ordinance, the following definitions shall apply in the interpretation and enforcement of this ordinance:

1. **“Affected Employee”** means a full-time employee who begins his or her regular work day at a single worksite between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays per week for at least twelve continuous months who is not an independent contractor. Seasonal agricultural employees including seasonal employees of processors of agricultural products, are excluded from the count of affected employees.
2. **“Affected Employer”** means an employer that employs one hundred (100) or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.
3. **“Alternative Mode”** means any means of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work week schedules if they result in reducing commute trips.
4. **“Alternative Work Schedules”** mean programs such as compressed work week schedules that eliminate work trips for affected employees.
5. **“Base Year”** means the twelve-month period which commences when a major employer is determined by the jurisdiction to be participating within the CTR program. The City of Woodinville uses this twelve-month period as the basis upon which it develops commute trip reduction goals.
6. **“Base Year Survey” or “Baseline Measurement”** means the survey, during the base year, of employees at a major employer worksite to determine the drive-alone rate and vehicle miles traveled per employee at the worksite to determine the drive-alone rate and vehicle miles traveled per employee at the worksite. The jurisdiction uses this measurement to develop commute trip reduction goals for the major

employer. The baseline measurement must be implemented in a manner that meets the requirements specified by the City of Woodinville.

7. **“Carpool”** means a motor vehicle, including a motorcycle, occupied by two (2) to six (6) people of at least 16 years of age traveling together for their commute trip, resulting in the minimum reduction of one motor vehicle commute trip.
8. **“Commute Trips”** mean trips made from a worker’s home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.
9. **“CTR”** is the abbreviation of Commute Trip Reduction
10. **“CTR Program”** means an employer’s strategies to reduce affected employees’ SOV use and VMT per employee.
11. **“Commute Trip Vehicle Miles Traveled per Employee”** means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.
12. **“Compressed Work Week”** means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements.
13. **“Custom Bus/Buspool”** means a commuter bus service arranged specifically to transport employees to work.
14. **“Dominant Mode”** means the mode of travel used for the greatest distance of a commute trip.
15. **“Drive Alone”** means the mode of travel used for the greatest distance of a commute trip.
16. **“Drive Alone Trips”** means commute trips made by employees in single occupant vehicles.
17. **“Employee Transportation Coordinator (ETC)”** means an person who is designated as responsible for the development, implementation and monitoring of any employer’s CTR program.
18. **“Employer”** means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit, or private, that employs workers.

19. **“Exemption”** means a waiver from any or all CTR program requirements granted to an employer by the City of Woodinville based on unique conditions that apply to the employer or employment site.
20. **“Flex-Time”** is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.
21. **“Full-Time Employee”** means a person, other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks per year for an average of at least 35 hours per week.
22. **“Good Faith Effort”** means that an employer has met the minimum requirements identified in RCW 70.94.531 and this ordinance, and is working collaboratively with the City of Woodinville to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed- upon length of time.
23. **“Implementation”** means active pursuit by an employer of the CTR goals of RCW 70.94.521-555 and this ordinance as evidenced by appointment of a transportation coordinator ETC, distribution of information to employees regarding alternatives to drive alone commuting, and commencement of other measures according to their CTR program and schedule.
24. **“A Major Employer”** means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months.
25. **“Major Employer Worksite”** or **“Affected Employer Worksite”** or **“Worksite”** means the physical location occupied by a major employer, as determined by the local jurisdiction.
26. **“Major Employment Installation”** means a military base or federal reservation, excluding tribal reservations, or other locations as designated by City of Woodinville, at which there are one hundred or more affected employees.
27. **“Mode”** means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, and walking, compressed work schedule and telecommuting.
28. **“Notice”** means written communication delivered via the United States Postal Service with receipt deemed accepted three days following the day on which the notice was deposited with the Postal Service, unless the third day falls on a weekend or legal holiday in which case the notice is deemed accepted the day after the weekend or legal holiday.

29. **“Peak Period”** means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
30. **“Peak Period Trip”** means any employee trip that delivers the employee to begin his or her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
31. **“Proportion of Drive Alone Trips”** or **“Drive Alone Rate”** means the number of commute trips over a set period made by affected employees in single occupancy vehicles divided by the number of potential trips taken by affected employees working during that period.
32. **“Teleworking or Telecommuting”** means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.
33. **“Transit”** means a multiple-occupant vehicle operated on a for-hire, shared-ride basis, including bus, ferry, rail, shared-ride taxi, shuttle, or vanpool.
34. **“Transportation Demand Management (TDM)”** means a broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.
35. **“Transportation Management Association (TMA)”** means a group of employers or an association representing a group of employers in a defined geographic area. A TMA may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.
36. **“Vanpool”** means a vehicle occupied by from seven (7) to fifteen (15) people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle trip. A vanpool counts as zero (0) vehicle trips.
37. **“Vehicle Miles Traveled (VMT) Per Employee”** means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.
38. **“Week”** means a seven-day calendar period, starting on Monday and through Sunday.
39. **“Weekday”** means any day of the week except Saturday or Sunday.
40. **“Writing,” “Written,” or “In Writing”** means original signed and dated documents. Facsimile (fax) transmissions are a temporary notice of action that must be followed by the original signed and dated document via mail or delivery.

Section 2. CTR Plan

The goals established for the City of Woodinville and affected employers in the City of Woodinville's Commute Trip Reduction Plan set forth in Attachment XXX are incorporated herein by reference. City of Woodinville staff is directed to make any corrections for typographical errors, include any graphical materials for information, and complete the Commute Trip Reduction Plan.

Section 3. CTR Goals

City of Woodinville goals for reductions in the proportions of drive-alone commute trips and vehicle miles traveled per employee by affected employers in the City of Woodinville's jurisdiction, major employment installations, and other areas designated by City of Woodinville are hereby established by the City of Woodinville's CTR Plan incorporated by (*Section 2 above*). These goals establish the desired level of performance for the CTR program in its entirety in the City of Woodinville.

Section 4. Responsible Agency

The City of Woodinville Public Works Department shall be responsible for implementing this ordinance, the City's CTR Plan and the City's CTR program should be identified together with any authority necessary to carry out such responsibilities such as rule-making or certain administrative decisions..

Section 5. Applicability

The provisions of this ordinance shall apply to any affected employer within the geographic limits of the CTR Plan adopted in (*Section 2 above*).

A. Notification of Applicability

1. In addition to the City of Woodinville's established public notification for adoption of an ordinance, a notice of availability of a summary of this ordinance, a notice of the requirements and criteria for affected employers to comply with this ordinance, and subsequent revisions shall be published at least once in the City's official newspaper not more than 30 days after adoption of this ordinance or revisions.
2. Affected employers located in Woodinville are to receive written notification that they are subject to this ordinance. Such notice shall be addressed by to the company's chief executive officer, senior official, CTR program manager, or registered agent at the worksite. Such notification shall provide 90 days for the affected employer to perform a baseline measurement consistent with the measurement requirements specified by the City of Woodinville.
3. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of this ordinance and are either notified or identify themselves to the City of

Woodinville within 90 days of the passage of the ordinance will be granted an extension to assure up to 90 days within which to perform a baseline measurement consistent with the measurement specified by the City of Woodinville.

4. Affected employers that have not been identified or do not identify themselves within 90 days of the passage of this ordinance and do not perform a baseline measurement consistent with measurement requirements specified by the City of Woodinville within 90 days from passage of the ordinance are in violation of this ordinance.
5. If an affected employer has already performed a baseline measurement, or an alternative acceptable to the City of Woodinville, under previous iterations of this ordinance, the employer is not required to perform another baseline measurement.

B. New Affected Employers

1. Employers that meet the definition of “affected employer” must identify themselves to the City of Woodinville within 90 days of either moving into the boundaries outlined in the CTR Plan adopted in (*Section 2 above*) or growing in employment at a worksite to one hundred (100) or more affected employees. Employers that do not identify themselves within 90 days are in violation of this ordinance.
2. Newly affected employers identified as such shall be given 90 days to perform a baseline measurement consistent with the measurement requirements specified by the City of Woodinville. Employers who do not perform a baseline measurement within 90 days of receiving written notification that they are subject to this ordinance are in violation of this ordinance.
3. Newly appointed ETC shall attend ETC training, as offered, within 90 days of appointment.
4. Not more than 90 days after receiving written notification of the results of the baseline measurement, the newly affected employer shall develop and submit a CTR Program to the City of Woodinville. The program will be developed in consultation with City of Woodinville staff (*listed in Section 4 above*) to be consistent with the goals of the CTR Plan adopted in (*Section 2 above*). Employers who do implement an approved CTR Program according to this schedule are in violation of this ordinance and subject to the penalties outlined in (*Section 9.4*) below.

C. Change in Status as an Affected Employer

Any of the following changes in an employer’s status will change the employer’s CTR program requirements:

1. If an employer initially designated as an affected employer no longer employs one hundred (100) or more affected employees and expects not to employ one hundred (100) or more affected employees for the next twelve (12) months, that employer is

no longer an affected employer. It is the responsibility of the employer to notify the City of Woodinville that it is no longer an affected employer. The burden of proof lies with the employer.

2. If the same employer returns to the level of one hundred (100) or more affected employees within the same twelve (12) months, that employer will be considered an affected employer for the entire twelve (12) months and will be subject to the same program requirements as other affected employers.
3. If the same employer returns to the level of one hundred (100) or more affected employees twelve (12) or more months after its change in status to an “unaffected” employer, that employer shall be treated as a new affected employer, and will be subject to the same CTR program requirements as other new affected employers.

Optional:

4. *This section only applies when the CTR Plan as approved in (Section 2 above) designates the employer as affected based on location within the geographic limits of the plan. If the CTR Plan affects the employer based on a location within a Growth and Transportation Efficiency Center, and the employer meets the criteria laid out for that Center, then the Center’s requirements will apply.*

Section 6. Requirements for Employers

An affected employer is required to make a good faith effort, as defined in 70.94.534(2) and this ordinance, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and drive alone commute trips. The CTR program must include the mandatory elements as described below.

6.1 Mandatory Program Elements

Each employer’s CTR program shall include the following mandatory elements:

1. **Employee Transportation Coordinator (ETC).** The employer shall designate a transportation coordinator to administer the CTR program. The ETC and/or designee’s name, location, and telephone number must be displayed prominently at each affected worksite. The ETC shall oversee all elements of the employer’s CTR program and act as liaison between the employer and the City of Woodinville. The objective is to have an effective transportation coordinator presence at each worksite; an affected employer with multiple sites may have one ETC for all sites. New ETC shall be required to attend ETC training within 90 days of appointment.
2. **Information Distribution.** Information about alternatives to drive alone commuting shall be provided to employees at least once a year and to new employees at the time of hire. The summary of the employer’s CTR program shall also be submitted to the City of Woodinville with the employer’s program description and regular report.

6.2 Additional Program Elements.

In addition to the specific program elements described above, the employer's CTR program shall include additional elements as needed to meet CTR goals. Elements may include, but are not limited to, one or more of the following:

- a. Promotional events
- b. Transportation fairs
- c. Commuter information center
- d. Ridematching services
- e. Bicycle training program
- f. Provision of preferential parking for high occupancy vehicles
- g. Guaranteed ride home program
- h. Compressed work week
- i. Alternative work schedules
- j. Telecommuting programs
- k. Secure bicycle parking facilities, lockers, changing areas, and showers
- l. Pedestrian facilities or improvements
- m. Signage for residential parking zone
- n. Reduction of SOV parking supply
- o. Discounted HOV parking price
- p. Increase or institution of SOV parking price
- q. Transportation allowance/voucher
- r. Transportation subsidy or discount
- s. Rideshare bonuses
- t. Carpool subsidy
- u. Carpool fuel incentives
- v. Vanpool sponsorship and subsidies
- w. Fleetpool
- x. Vanpool program
- y. On-site child care services
- z. Shuttle services
- aa. Alternative measures designed to facilitate the use of high-occupancy vehicles.

6.3 CTR Program Report and Discussion

Affected employers shall review their program and file a regular progress report with the City of Woodinville in accordance with the format provided by the City of Woodinville.

The CTR Program Report and Description outlines the strategies to be undertaken by an employer to achieve the commute trip reduction goals for the reporting period. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other to implement program elements.

At a minimum, the employer's CTR Program Report and Description must include:

1. A general description of the employment site location, transportation characteristics, employee parking availability, on-site amenities, and surrounding services;

2. The number of employees affected by the CTR program and the total number of employees at the site;
3. Documentation on compliance with the mandatory CTR program elements (as described in *Section 6.1*);
4. Description of any additional elements included in the employer's CTR program (as described in *Section 6.2*); and
5. A statement of organizational commitment to provide appropriate resources to the program to meet the employer's established goals.

6.4 Biennial Measure of Employee Commute Behavior

In addition to the baseline measurement, employers shall conduct a program evaluation as a means of determining worksite progress toward meeting CTR goals. As part of the program evaluation, the employer shall distribute and collect Commute Trip Reduction Program Employee Questionnaires (surveys) at least once every two years, and strive to achieve at least a 70% response rate from employees at the worksite.

Section 7. Record Keeping

Affected employers shall maintain a copy of their approved CTR Program Description and Report, their CTR Employee Questionnaire results, and all supporting documentation for the descriptions and assertions made in any CTR report to the City of Woodinville for a minimum of 48 months. The City of Woodinville and the employer shall agree on the record keeping requirements as part of the accepted CTR program.

Section 8. Schedule and Process for CTR Program Description and Report

8.1 Document Review

City of Woodinville shall provide the employer with written notification if a CTR program is deemed unacceptable. The notification must give cause for any rejection. If the employer receives no written notification of extension of the review period of its CTR program or comment on the CTR program or annual report within 90 days of submission, the employer's program or annual report is deemed accepted. City of Woodinville may extend the review period up to 90 days. The implementation date for the employer's CTR program will be extended an equivalent number of days.

8.2 Schedule

Upon review of an employer's initial CTR program, City of Woodinville shall establish the employer's regular reporting date. This report will be provided in a form provided by City of Woodinville consistent with (*Section 6.3 above*).

8.3 Modification of CTR Program Elements

Any affected employer may submit a request to City of Woodinville for modification of CTR requirements. Such request may be granted if one of the following conditions exist:

1. The employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer, or

2. The employer can demonstrate that compliance with the program elements would constitute an undue hardship.

City of Woodinville may ask the employer to substitute a program element of similar trip reduction potential rather than grant the employer's request.

8.4 Extensions

An employer may request additional time to submit a CTR Program Description and Report, or to implement or modify a program. Such requests shall be via written notice at least 30 days before the due date for which the extension is being requested. Extensions not to exceed 90 days shall be considered for reasonable causes. City of Woodinville shall grant or deny the employer's extension request by written notice within 10 working days of its receipt of the extension request. If there is no response issued to the employer, an extension is automatically granted for 30 days. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's regular reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of City of Woodinville.

8.5 Implementation of Employer's CTR Program.

Unless extensions are granted, the employer shall implement its approved CTR program not more than 90 days after receiving written notice from the City of Woodinville that the program has been approved or with the expiration of the program review period without receiving notice from the City of Woodinville.

Section 9. Enforcement

A. Worksite Exemptions

1. An affected employer may request the City of Woodinville to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of this ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the City of Woodinville at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. City of Woodinville shall grant or deny the request within 30 days of receipt of the request. The City of Woodinville shall review annually all employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

B. Employee Exemptions

1. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The City of Woodinville will use the criteria identified in the CTR Board Administrative Guidelines to assess the validity of employee exemption requests. The City of Woodinville shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

C. Modification of CTR Program Goals

1. Any affected employer may request the City of Woodinville modify its program goals. Such request shall be filed in writing at least 60 days prior to the date which the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must clearly demonstrate that it has implemented all of the elements contained in its approved CTR program.
2. The City will review and deny or grant requests for goal modifications in accordance with procedures and criteria identified in the CTR Board Guidelines. . An employer may not request a modification of the applicable goal until one year after the date of City approval of its initial program and annual report.

D. Modification of CTR Program Goals

1. An affected employer may request that the City of Woodinville modify its CTR program goals. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program.
2. The City of Woodinville will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Board Guidelines.
3. An employer may not request a modification of the applicable goals until one year after City of Woodinville's approval of its initial program description or annual report.

E. Extensions.

An employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. Such requests shall be via written notice at least 30 days before the due date for which the extension is being requested.. Requests for extensions must be made prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 allowed extension days per year. Extensions shall not exempt an employer from any

responsibility for meeting program goals. Extensions granted due to delays or difficulties with any program elements shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the City Manager.

Section 10. Appeals of Administrative Decisions

A. Appeal of Final Decisions. Employers may file a written appeal to the City's Hearing Examiner of the City's final decisions regarding the following actions:

1. Rejection of an employer's proposed program.
2. Denial of an employer's request for an exemption or modification of any of the requirements under this ordinance or a modification of the employer's program.
3. Denial of credits requested under Section 10 of this Chapter.

B. Appeals Filed Under this Section. Appeals must be filed with the City within twenty (20) days after the employer receives notice of a final decision. Timely appeals shall be heard by the City's Hearing Examiner. Determinations on appeals shall be based on whether the decision being appealed was consistent with the state law.

Section 11. Enforcement

11.1 Compliance

For purposes of this section, compliance shall mean:

1. Fully implementing in good faith all mandatory program elements as well as provisions in the approved CTR Program Description and Report;
2. Providing a complete CTR Program Description and Report on the regular reporting date; and
3. Distributing and collecting CTR Employee Questionnaire during the scheduled survey time period.

11.2 Program Modification Criteria

The following criteria for achieving goals for VMT per employee and proportion of drive alone trips shall be applied in determining requirements for employer CTR program modifications:

1. If an employer meets either or both goals, the employer has satisfied the objectives of the CTR plan and will not be required to improve its CTR program.
2. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met the applicable drive alone or VMT goal, no additional modifications are required.

3. If an employer fails to make a good faith effort as defined in RCW 70.94.534(2) and this ordinance, and fails to meet the applicable drive alone or VMT reduction goal, City of Woodinville shall direct the employer to revise its program within 30 days to come into compliance with the measures defined by RCW 70.94.534(2), including specific recommended program modifications. In response to the recommended modifications, the employer shall submit a revised CTR Program Description and Report, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. City of Woodinville shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, City of Woodinville will send written notice to that effect to the employer within 30 days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by City of Woodinville within 10 working days of the conference.

11.3 Violations

The following constitute violations if the deadlines established in this ordinance are not met:

1. Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and drive alone goals as specified in this Ordinance;
2. Submission of false or fraudulent data in response to survey requirements;
3. Failure to self identify as an affected employer;
4. Failure to perform a baseline measurement, including:
 - a. Employers notified or that have identified themselves to City of Woodinville within 90 days of the ordinance being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City of Woodinville within 90 days form the notification or self-identification;
 - b. Employers not identified or self-identified within 90 days of the ordinance being adopted and that do not perform a baseline measurement consistent with the requirements specified by the City of Woodinville within 90 days form the adoption of the ordinance;
5. Failure to develop and/or submit on time a complete CTR program;
6. Failure to make a good faith effort, as defined in RCW 70.94.534 and this ordinance;
or
7. Failure to revise a CTR program as defined in RCW 70.94.534(4) and this ordinance.

11.4 Penalties

1. No affected employer with an approved CTR program which has made a good faith effort may be held liable for failure to reach the applicable SOV or VMT goal;

2. Each day of failure to implement the program shall constitute a separate violation, subject to penalties as described in RCW 7.80;
3. An affected employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employees shall be presumed to act in good faith compliance if they:
 - a. Propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and
 - b. Advise the union of the existence of the statute and the mandates of the CTR program approved by the City of Woodinville and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

11.5 Appeals of Penalties

1. An affected employer to whom a notice of violation and imposition of monetary penalties is directed may appeal the notice including the determination that a violation exists or may appeal the amount of any monetary penalty imposed to the City Hearing Examiner.
2. An affected employer may appeal a notice of violation by filing a written notice of appeal with the Department of Planning and Community Development within seven calendar days from the date of service of the notice of violation and imposition of monetary penalties.
3. The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the Hearing Examiner may impose a daily monetary penalty from the date of service of the Notice of Civil Infraction if he finds that the appeal is frivolous or intended solely to delay compliance.
4. The hearing before the Hearing Examiner shall be conducted as follows:
 - a. The Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant at least seventeen calendar days before such hearing.
 - b. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.
5. The Hearing Examiner shall determine whether the City has proved by a preponderance of the evidence that a violation has occurred and shall affirm, vacate,

suspend or modify the amount of any monetary penalty imposed by the notice of civil violation with or without written conditions.

6. The Hearing Examiner shall consider the following in making his/her determination:
 - a. Whether the intent of the appeal was to delay compliance, or
 - b. Whether the appeal is frivolous, or
 - c. Whether the appellant exercised reasonable and timely effort to comply with applicable requirements, or
 - d. Any other relevant factors.
7. The Hearing Examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.
8. The decision of the Hearing Examiner may be reviewed for illegal, corrupt or arbitrary or capricious action in King County Superior Court. The petition for review must be filed within thirty (30) calendar days of the final decision of the hearing examiner.
9. The collection of the monetary penalty shall be as follows:
 - a. The monetary penalty constitutes a personal obligation of the person to whom the civil infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven (7) calendar days from the date of service of notice of violation and imposition of monetary penalties or, if an appeal was filed pursuant to this Chapter, within seven (7) calendar days of the Hearing Examiner's decision.
 - b. The City Attorney, on behalf of the City, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.
 - c. In the event of failure to appear at a hearing provided herein, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of twenty-five (\$25) dollars.
 - d. In the event of a conflict between this Chapter and any other city ordinance providing for a civil penalty, this Chapter shall control.
10. A person who willfully fails to pay a monetary penalty as required by provisions of this Chapter may be found in civil contempt of court after notice and hearing.

Section 12. Repealer

Ordinance No. 195 is hereby repealed.

Section 13. Severability

If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 14. Effective Date

This Ordinance shall be in force and effect five days from and after its passage by the Woodinville City Council and publication, as required by law.

**ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF ITS
PASSAGE THIS ____ DAY OF _____ 2008.**

Scott Hageman, Mayor

ATTEST/AUTHENTICATED:

By:_____
Jennifer Kuhn
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By:_____
Greg A. Rubstello
City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____